

JOHN R. CHITWOOD III

IBLA 83-663

Decided January 2, 1985

Appeal from a decision of the Eastern States Office, Bureau of Land Management, rejecting a protest to issuance of oil and gas lease ES 22741.

Reversed and remanded.

1. Oil and Gas Leases: Acquired Lands Leases -- Oil and Gas Leases:
Applications: Description

Under 43 CFR 3101.2-3 (1980), a noncompetitive over-the-counter offer for acquired lands which included a request for less than an entire tract of acquired land was required to describe the land by course and distance between the successive angle points of the boundary of the tract sought and was further required to be accompanied by a map showing the land sought. Where an offer did not so describe the land, it could afford the offeror no priority.

APPEARANCES: John R. Chitwood III, pro se.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

John R. Chitwood III has appealed from a decision of the Eastern States Office, Bureau of Land Management (BLM), dated April 20, 1983, denying his protest to the issuance of oil and gas lease ES 22741 to the extent that it embraced 928 acres of land, denominated in the offer as TVA-6 in Graham County, North Carolina.

Noncompetitive over-the-counter oil and gas lease offer ES 22741 was filed on October 12, 1979, by Weaver Oil and Gas Corporation (Weaver) seeking a total of 2,302.30 acres in Graham County. Included in this request was a tract of land described as TVA-6. All of the lands sought were acquired lands within the boundaries of Nantahala National Forest. Pursuant to established procedures, the offer was referred to the Forest Service for its leasing recommendations.

On April 7, 1983, the Forest Service responded that it did not object to leasing provided certain stipulations were attached to the lease. The Forest Service report noted, however, that tract TVA-6 contained 4,892 acres and that the area which Weaver sought (as indicated on the map it submitted with the offer) did contain 928 acres but was properly described as a "part of" TVA-6.

In the meantime, on March 21, 1983, appellant filed a formal protest to the issuance of an oil and gas lease to Weaver embracing any part of TVA-6. Appellant alleged that Weaver had violated the applicable regulation, 43 CFR 3101.2-3(b)(1) (1980), which required that if the land sought to be leased embraced less than the entire tract acquired by the United States, it must be described by metes and bounds. Appellant argued that he had submitted an oil and gas lease offer on February 23, 1983, which properly described the disputed acreage.

By decision of April 20, 1983, the Eastern States Office denied the protest. In this decision, BLM noted that:

Communication with the Forest Service has provided clarification of the description of the tract in question, Tract TVA-6, Graham County, North Carolina. Tract TVA-6 was a large acquisition consisting of approximately 5,820 acres. The land in Graham County (TVA-6) is not considered a part of Tract TVA-6, but rather a self-contained portion, within the whole acquisition labeled Tract TVA-6. By historical precedent, the Forest Service considers county lines as distinguishing [sic] and separating parts of tracts. Tract TVA-6 in Graham County, North Carolina is adequately described in lease offer ES 22741. It complies with the description in the title report provided by the U.S. Forest Service. [Emphasis in original.]

There are, of course, two obvious discrepancies. Thus, the original Forest Service report had explicitly stated that the land sought was "part of" tract TVA-6. Second, the Forest Service report had stated that the total acreage within TVA-6 was 4,892, whereas BLM suggested (as had appellant in his protest) that the total acreage was 5,820 acres. 1/

Regardless of what the Forest Service may presently "consider" the effect of county lines to be, it is clear that, when it was acquired, "Tract TVA-6" embraced lands both in Graham and Swain Counties, aggregating acreage considerably in excess of 928 acres. The pertinent regulations relating to unsurveyed acquired lands in effect when Weaver's offer was filed provided:

If the desired land constitutes less than the entire tract acquired by the United States, it must be described by courses and distances between successive angle points on its boundary tying by course and distance into the description in the deed or other document by which the United States acquired title to the land.

1/ If one adds the acreage in that part of tract TVA-6 within Graham County (928 acres) to the total acreage figure provided by the Forest Service in its title report (4,892 acres), the figure derived is 5,820 acres. Thus, either the Forest Service improperly subtracted the acreage in Graham County from the total or BLM erroneously counted that acreage twice. Fortunately, it is not necessary for the Board to resolve this question in the present appeal.

43 CFR 3101.2-3(b)(1) (1980). Admittedly, 43 CFR 3101.2-3(b)(3) (1980) also provided that "if an acquisition tract number has been assigned by the acquiring agency to the identical tract desired, a description by such tract number will be accepted." This exception, however, was expressly held not to apply to situations in which less than the entire tract was sought to be leased.

Thus, in Chevron, U.S.A., Inc., 67 IBLA 266 (1982), this Board decided that where less than an entire tract of unsurveyed acquired land is sought, "the tract must be described by course and distance between the successive angle points of the boundary of the tract sought." Id. at 268. Use of an acquisition tract number, even when accompanied by a map which clearly delineates the exact land sought could not suffice since 43 CFR 3102.2-3(b)(3), which allowed such reference, was only applicable where the land sought was "identical" to the land given a specific acquisition number. Obviously, where only a fraction of the land acquired by an agency under a specific acquisition number is being sought, the land for which offer has been made is not "identical" with the total acreage so acquired.

We recognize that the applicable regulations have been amended subsequent to the decision of BLM denying appellant's protest. See 43 CFR 3111.2-2 (1983). It is unnecessary to decide whether Weaver's offer conformed to the new regulations, since, even if it did, we could not apply the new regulation because of the intervening rights flowing from appellant's offer. See, e.g., James E. Strong, 45 IBLA 386 (1980). ^{2/} Thus, BLM should have upheld the protest and rejected Weaver's offer to the extent that it embraced land denominated as TVA-6.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed and the case files are remanded for further action not inconsistent herewith.

James L. Burski
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Wm. Philip Horton

Chief Administrative Judge.

^{2/} In any event, it is less than clear whether Weaver's offer would comport with the new regulation. In reference to its predecessor, 43 CFR 3101.2-3 (1980), the Board had occasion to note that it exhibited a "dearth of clarity" (Walter R. Wilson Jr., 55 IBLA 96, 104 (1981)), and described it variously as "something less than crystal clear" (Murphy Oil Corp., 13 IBLA 160, 164 (1973)) and "less than a paradigm of clarity" (Arthur E. Meinhart, 5 IBLA 345, 349 (1972)). The new version appears to have rendered none of these characterizations obsolete.

